

46 Am. Jur. 2d Judges § 199

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Judges

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IX. Disqualification to Act in Particular Case

D. Waiver and Estoppel

§ 199. Statutory availability of waiver and estoppel in disqualification of judge

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Waiver of judicial disqualification is generally governed by constitutional and statutory provisions, and legislatures have the power to permit a waiver of disqualification of a judge.¹

Under statutes that specify the causes of disqualification but do not forbid a disqualified judge to act, disqualification is not generally regarded as jurisdictional, and it may be waived.²

Where a statute or a state constitution provides that a judge must not sit in a case in which the judge is disqualified, the disqualification is generally held to be jurisdictional and cannot be waived,³ although some authority permits waiver even under such a statute.⁴ A canon of judicial conduct regarding disqualification permits a waiver of disqualification if all parties are informed and agree, but such waiver is not allowed for cases of personal or actual bias.⁵ Discretionary judicial acts by a disqualified judge are void.⁶

Waiver of disqualification is governed by court rule in some jurisdictions.⁷

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Footnotes

- 1 [Archer v. Eidelson](#), 616 P.2d 17 (Alaska 1980).
- 2 [State v. Garcia](#), 1943-NMSC-040, 47 N.M. 319, 142 P.2d 552, 149 A.L.R. 1394 (1943).
- 3 [Freedom Communications, Inc. v. Coronado](#), 372 S.W.3d 621 (Tex. 2012).
- 4 [Dotson v. Burchett](#), 301 Ky. 28, 190 S.W.2d 697, 162 A.L.R. 636 (1945).

5 In re Disciplinary Proceeding Against Jones, 182 Wash. 2d 17, 338 P.3d 842 (2014).
6 Freedom Communications, Inc. v. Coronado, 372 S.W.3d 621 (Tex. 2012).
7 Van Sweringen v. Van Sweringen, 22 N.J. 440, 126 A.2d 334, 64 A.L.R.2d 593 (1956).

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